

February 20, 2002

**OFFICE OF THE HEARING EXAMINER  
KING COUNTY, WASHINGTON**

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**REPORT AND DECISION**

**SUBJECT:** Department of Development and Environmental Services File No. **L00ALT05**

**LANCASHIRE SHORT PLAT ALTERATION**  
Short Plat Alternation Appeal

Location: SE 138<sup>th</sup> Place and 196<sup>th</sup> Avenue SE

Applicant/Appellant: **Thomas Lancashire**  
13019 Lk. Kathleen Rd.  
Renton, WA 98059  
Telephone: (425) 228-8186  
Email: [asplank@cs.com](mailto:asplank@cs.com)

King County: Department of Development and Environmental Services  
Current Planning, *represented by*  
**Tom Slade**  
900 Oakesdale Avenue Southwest  
Renton, Washington 98055-1219  
Telephone: (206) 296-7059  
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**SUMMARY OF DECISION/RECOMMENDATION:**

Department's Preliminary Recommendation:	Deny
Department's Final Recommendation:	Deny
Examiner's Decision:	Deny

Complete application:	December 21, 2000
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**EXAMINER PROCEEDINGS:**

Hearing Opened:	January 25, 2002
Hearing Closed:	January 25, 2002

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

#### KEY TOPICS:

- King County Road Standards (KCRS)
- Surface Water Design Manual (SWDM)
- Administrative procedure

#### SUMMARY:

Denies appeal from short subdivision administrator's decision to deny one-lot short plat alteration due to insufficient information.

**FINDINGS, CONCLUSIONS & DECISION:** Having reviewed the record in this matter, the Examiner now makes and enters the following:

#### FINDINGS:

1. **Proposal.** Thomas Lancashire ("Applicant") proposes to alter an existing short subdivision by removing the "non-building" restriction from portions of King County Short Subdivision no. 781032. The subject property is located near Southeast 138<sup>th</sup> Place and 196<sup>th</sup> Avenue Southeast and is otherwise identified as Assessor's tax lot no. 182306-9187. The property and surrounding properties are classified as a 5. The lot, if approved, would comprise approximately one acre. The Applicant proposes to obtain water from King County Water District no. 90 and to install an on-site sewage disposal system in unincorporated southeastern King County.

The short subdivision which is the subject of this plat alteration application was recorded in 1981 by the present Applicant. Lot nos. 1, 2 and 3 were designated "non-building lots" pursuant to code provision providing for the same. On December 21, 2000, the Applicant applied for the short plat alteration at issue, in order to create one building lot by combining portions of those same three lots. The short plat alteration application is described in exhibit no. 1.

2. **Department decision on application.** On September 14, 2001 the Department of Development and Environmental Services ("DDES" or "Department") issued a decision to deny the short plat alteration application because the administrative review record contained insufficient information upon which to base a final decision and because Applicant Lancashire was unwilling to provide the additional information that the Department found necessary to complete the application review. Exhibit no. 5. In hearing testimony, the Applicant confirms his unwillingness to provide the requested information. The informational requests at issue concern the following:
  - a. KCC 19A.08.150.B.10 requires short subdivision applications to include, among other things, the following:

Location of adjoining parcels and buildings within 100 feet of the site shall be

shown and delineated by dashed lines.

The Applicant has not responded to this request.

- b. Several King County Road Standards (KCRS, 1993) provisions apply to this proposal.
- KCRS Section 2.20 (Access and Circulation Requirements) requires that no residential street shall serve more than 100 lots or dwelling units unless the street is connected in at least two locations with another street that functions at a level consistent with KCRS Sections 2.02 and 2.03. KCRS Sections 2.02 and 2.03 establish functional standards for arterials and residential access streets.
  - KCRS Section 2.06.B.7 requires public dedication of the road when the lot count exceeds 16 lots.
  - KCRS Section 1.03.A requires 20 feet of travel surface for public rights-of-way. The access road fronting the proposed lot is privately owned. KCRS Section 2.06.C requires full width road improvements for roads located in private easements when they are not dedicated to the public.
  - KCRS Section 2.08 requires that dead-end streets exceeding 150 feet in length shall be provided an 80 foot diameter turn around bulb at the terminus. Further, it limits the length of a cul-de-sac street to 600 feet.
  - KCRS Section 5.11 requires non-yielding structures or improvements to be set back from the edge of the traveled way a minimum of 10 feet. KCRS Chapter 8 governs placement of any utility structures.
  - KCRS Sections 2.12 and 2.13 sets standards for stopping site distance and entering site distance.

In its July 13, 2001 letter of denial, the Department indicates that either additional measurements or a variance application for each of these KCRS requirements are necessary to complete processing of the application. The authority of the King County Road Engineer to grant variances from the KCRS is established in KCRS Section 1.08 and KCC 14.42.060. The application process is explained in DDES Customer Information Bulletin No. 34, a copy of which the Department provided to Applicant Lancashire. He has provided neither the requested measurements related to the above described KCRS requirements, nor applied to the road engineer for a variance.

- c. The King County Surface Water Design Manual (SWDM) requires a “Level 1” drainage analysis and a conceptual drainage plan for each short subdivision application. A Level 1 drainage analysis surveys existing drainage conditions, including downstream flow restrictions. The Level 1 drainage analysis submitted by the Applicant does not address downstream flow restrictions. Nor has the Applicant filed a conceptual drainage plan. The Department asks that the Level 1 drainage analysis address an alleged flooding problem south of the subject property. The Department requires the downstream

analysis to address SWDM core requirement no. 2 (off site analysis), core requirement no. 3 (flow control) and core requirement no. 4 (conveyance system). Drainage review is required for any subdivision in King County which adds 5,000 square feet or more of new impervious surface. SWDM section 1.1.1. The 5,000 square foot threshold is restated in SWDM section 1.2.3.

3. **Appeal filed.** Appellant Lancashire timely filed his appeal on September 20, 2001. Exhibit nos. 10a and 10b. He bases the appeal on several grounds:

- a. The Department issued a notice of complete application on February 23, 2001, *effective February 9, 2001*. Based on these facts and KCC 20.20.050 (notice of complete application to Applicant) the Appellant argues that the Department had no authority to request additional information on July 13, 2001. KCC 20.20.050.B states:

An application shall be deemed complete under this section if the Department does not provide written notice to the Applicant that the application is complete within the 28 day period as provided herein.

From this language the Appellant argues that, in essence, complete means complete and the Department must take action on it without requiring additional information.<sup>1</sup>

- b. Appellant Lancashire argues that the requirements imposed upon this application as conditions of final approval are unduly burdensome. As noted in finding no. 2, above, there is code authority for each of the requirements imposed. Each is directly related to the impacts generated by the proposed additional lot. Although the Applicant argues that it is not an “additional” lot, that it was approved as a lot line adjustment in 1992 (a fact to which the Department stipulates), approval of the requested plat alteration will indeed generate all of the impact of an additional lot. It will remove the “non-building” restriction.

The Department correctly observes that Appellant Lancashire has not filed any variance requests from the code citations indicated in finding no. 2, above. The Department and the Roads Division both indicate an intention and willingness to review Mr. Lancashire’s variance application(s) favorably. Thus far, he has refused to file any such application.

- c. The Appellant argues that access to the subject property was approved and granted in 1981. However, the land area which was granted short subdivision approval in 1981 and which is now the subject of this review contained a “non-building”restriction. Mr. Lancashire now wishes to change the status of that lot, but objects to the standards which apply to a plat alteration. The following subdivision code sections apply:
- Alterations shall be processed in accordance with RCW 58.17.215 through RCW 58.17.218, and shall apply with regulations in effect at the time the alteration application was submitted. KCC 19A.16.070.A.

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<sup>1</sup> In fact, that is precisely what the Department did. It acted on the information it had. It denied the application.

- Alterations shall be accomplished by following the same procedure and satisfying the same laws, regulations, rules and conditions as required for a new short plat application. KCC 19A.16.080.A.
- An alteration may be allowed to remove non-building status on short subdivisions provided that no public dedications are required and original conditions of approval do not prohibit conversion of a non-building lot to a building lot. Approval of such alteration requires completion of the original conditions of approval *and the application of new conditions for the lot consistent with current standards*, preparation of a new map page prepared by a land surveyor for recording and payment of all fees required for such review (*emphasis added*). KCC 19.A.16.080.E.

The DDES report to the Examiner, exhibit no. 5, indicates at page 2 that the Road Division's representative in this matter, Craig Comfort, PE, indicated that many of the existing road development standards could likely be waived or modified through the variance process. Mr. Lancashire was advised that the proper method to review a number road variance requests would be to submit one variance application with all of the proposed variance issues identified.

#### CONCLUSIONS:

1. As Appellant Lancashire has indicated, the linchpin issue in this appeal review concerns the Department's failure to promptly notify (within 28 days) the Applicant regarding whether the application was "complete." In his argument in support of this position, Appellant Lancashire overlooks KCC 20.20.040.A.13 which states in part:

A permit application is complete for purposes of this section when it meets the procedural submission requirements of the Department and is sufficient for continued proposing *even though additional information may be required* or project modifications may be undertaken subsequently. *The determination of completeness shall not preclude the Department from requesting additional information or studies either at the time of notice of completeness* or subsequently if new or additional information is required or substantial changes in the proposed action occur, as determined by the Department. *Emphasis added.*

As explained in hearing, the term "complete application," as used in County subdivision regulation is coincident with the term "vesting." It is a milestone in the review of the subdivision application beyond which applicable regulations may be not changed. In the case of this application, no change in regulations has been attempted by the Department. Rather, the Department is applying the same regulations that have been in existence for several years. KCC 20.20.040.A.18 makes clear that the Metropolitan King County Council, when it adopted procedures for land use permit applications, anticipated that additional information would be required after this vesting date, even though new regulations could not be applied. Further, as noted by the Department in its argument, the quote contains no penalty or sanctions for failing to timely issue its notice of complete application – other than the consequence of automatically

guaranteeing the Applicant a vesting date on the 28th day following receipt of the short plat alteration application.

2. The preponderance of evidence overwhelmingly supports the conclusion that the King County Road Standards (KCRS) provisions cited by the Department and Roads Division certainly apply. Likewise, the Surface Water Design Manual provisions cited in the findings above also apply. Appellant Lancashire has argued the undue burden of complying with such regulations indicating that they may cost \$100,000 or more. However, Mr. Lancashire has no way of knowing that because he has not exhausted administrative remedy; that is, he has not applied for the variances from these regulations that DDES and the Roads Division seem so willing to consider. The issue of rough proportionality of burden to benefit or burden to impact cannot be examined until those variance applications have been reviewed and acted upon.

#### DECISION:

The appeal of Thomas Lancashire is DENIED.

#### ORDER:

1. If Appellant Thomas Lancashire files a letter of intent to proceed with review of DDES application file no. L00ALT05 on or before March 13, 2002, then the Department shall continue to review that application and any variance applications thereby associated, without charging a new plat alteration application fee.
2. If, however, Mr. Lancashire does not file any such letter of intent, then the denial indicated in the decision above shall take full effect and any further review of this matter shall require a new plat alteration application and a new application fee.
3. If Mr. Lancashire chooses to proceed with review of the subject application (by filing the letter of intent described in paragraph no. 1 of this order, above), then the additional information required to complete review of application no. L00ALT05 shall be the same as indicated in exhibit no. 3, with the following changes:
  - a. Access and traffic requirement no. B.2 is DELETED.
  - b. Access and traffic requirement B.3(a) is DELETED and the following SUBSTITUTED:

Offsite road improvements will be required from the end of the King County maintained road to the west property boundary. This will require twenty foot wide all-weather (crushed rock, minimum) surfacing unless a variance is obtained.
  - c. Access and traffic requirement no. B.5 is AMENDED to read as follows:

Obstacles appear to be located along the road leading to the property within 10 feet of the existing travel lane. Relocation of these poles is required (KCRS Section 5.11) unless variance approval is granted for the existing location. *This applies only to the private road extending from county-maintained right-of-way*

*to the west property boundary.*

- d. Access and traffic requirement no. B.6 is AMENDED to read as follows:

Sight distance along the off-site road appears to be less than required (KCRS Sections 2.12 and 2.132). Road variance approval is required unless verification is provided confirming compliance. *Measurements are required in either case, from end of county road to west property boundary.*

- e. Drainage requirement no. C.2.

Level 1 Drainage Analysis: Submit 3 copies of a (revised) Level 1 drainage analysis per Core Requirements nos. 2, 3 and 4, which is prepared, stamped, and signed by a professional engineer licensed in the State of Washington. The (revised) Level 1 study shall address the flooding problem south of the property.

In all other respects, the Department's "Corrected or Additional Information or Studies List" (exhibit no. 3) remains unchanged and in full effect.

ORDERED this 20th day of February, 2002.

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R. S. Titus, Deputy  
King County Hearing Examiner

TRANSMITTED this 20<sup>th</sup> day of February, 2002 via certified mail, to the following party:

Thomas Lancashire  
13019 Lk. Kathleen Rd.  
Renton, WA 98059

TRANSMITTED this 19th day of February, 2002, to the parties and interested persons of record:

K C Exec Horse Council  
Eleanor Moon  
12230 NE 61st  
Kirkland WA 98033

Victor Deppman  
13205 158th SE  
Renton WA 98059  
Redmond WA 98052

Roger Dorstad  
Evergreen East Realty  
16651 NE 79th St.

Don Eggiman  
19249 SE 138th PL  
Renton WA 98059

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Nick Gillen  
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Tom Slade  
DDES/LUSD  
OAK-DE-0100

Larry West  
LUSD/SDSS  
Wetland Reviewer  
MS OAK-DE-0100

#### NOTICE OF RIGHT TO APPEAL

In order to appeal the decision of the Examiner, written notice of appeal must be filed with the Clerk of the King County Council with a fee of \$125.00 (check payable to King County Office of Finance) ***on or before March 6, 2002***. If a notice of appeal is filed, the original and six (6) copies of a written appeal statement specifying the basis for the appeal and argument in support of the appeal must be filed with the Clerk of the King County Council ***on or before March 13, 2002***. Appeal statements may refer only to facts contained in the hearing record; new facts may not be presented on appeal.

Filing requires actual delivery to the Office of the Clerk of the Council, Room 1025, King County Court-house, prior to the close of business (4:30 p.m.) on the date due. Prior mailing is not sufficient if actual receipt by the Clerk does not occur within the applicable time period. The Examiner does not have authority to extend the time period unless the Office of the Clerk is not open on the specified closing date, in which event delivery prior to the close of business on the next business day is sufficient to meet the filing requirement.

If a written notice of appeal and filing fee are not filed within fourteen (14) calendar days of the date of this report, or if a written appeal statement and argument are not filed within twenty-one (21) calendar days of the date of this report, the decision of the hearing examiner contained herein shall be the final decision of King County without the need for further action by the Council.

#### MINUTES OF THE JANUARY 25, 2002 PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO: L00ALT05

R. S. Titus was the Hearing Examiner in this matter. Participating in the hearing and representing the Department was Tom Slade. Participating in the hearing and representing the Applicant was Thomas Lancashire and Joan Probala. There were no other participants in this hearing.

The following exhibits were offered and entered into the record:

- Exhibit No. 1 Page 1 and 1A--Proposed Short Plat Alteration Map  
Page 2—Application for Short Plat Alteration
- Exhibit No. 2 Pages 1 to 14—Copy of Original Short Subdivision Conditions of Approval, Short Plat map, waiver of drainage (hydraulic) study, etc.
- Exhibit No. 3 Pages 1 & 2—Copy of Notice of Additional Information or Corrected Studies List
- Exhibit No. 4 Pages 1 to 5—Copies of letters and e-mails between applicant and DDES
- Exhibit No. 5 Pages 1 to 5—DDES Staff Report dated September 14, 2001
- Exhibit No. 6 Pages 1 & 2—"Permits+" main screen and NCA letter to applicant
- Exhibit No. 7 Assessor's Map
- Exhibit No. 8 Revised Drainage Information



Exhibit No. 9 DDES File L00ALT05

Exhibit No. 10a Mr. Lancashire's statement of appeal dated September 20, 2001

Exhibit No. 10b Mr. Lancashire's "Deposition for Hearing Examiner, dated September 20, 2001

Exhibit No. 11 Mr. Lancashire's exhibits, numbered 11-1 through 11-13

Exhibit No. 11-1 Copy of Code 19A.16.080 Alterations of final short plats

Exhibit No. 11-2 Notice of Complete Application to Joan Probala from Vaughan Norris, dated February 2, 2001

Exhibit No. 11-3 Notice of Application, dated February 23, 2001

Exhibit No. 11-4 A copy of KC Code 20.20.050 Notice of Complete Application

Exhibit No. 11-5 Letter from Tom Slade to Joan Probala, dated July 13, 2001

Exhibit No. 11-6 Response to Eggiman letter, from Charles and Brenda Handley and Don and Sally Eggiman, dated September 29, 2000

Exhibit No. 11-7 Copy of KCC 21.A.01.040 Transition to new code

Exhibit No. 11-8 Invoice from DDES, Detail of Hourly Charges, dated May 23, 2001, June 11, 2001, and August 12, 2001

Exhibit No. 11-9 Letter from Mr. Lancashire to Curtis Foster, dated August 2, 2001

Exhibit No. 11-10 Letter from Tom Slade to Mr. Lancashire, dated August 15, 2001

Exhibit No. 11-11 Copy of e-mail from Tom Slade to Mr. Lancashire, dated August 31, 2001

Exhibit No. 11-12 Letter from Greg Borba to Mr. Lancashire, dated September 14, 2001

Exhibit No. 11-13 Corrected or Additional Information or Studies List

Exhibit No. 12 Applicant response to pre-hearing order of November 9, 2001

Exhibit No. 13 Applicant request to remove the non-building status, dated January 19, 2002

Exhibit No. 14 Rebuttal statement (e-mail) from Mr. Lancashire to Stan Titus, dated December 26, 2001

RST:gao

Plat alterations/L00ALT05 RPT